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RECORDATION NO. 18632
FILED 1425
OF COUNSEL
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DEC 30 1993 -9 10 AM

INTERSTATE COMMERCE COMMISSION
RECORDATION NO. 18632
FILED 1425

December 30, 1993

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INTERSTATE COMMERCE COMMISSION
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INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two duly executed copies of the following documents, all dated as of December 30, 1993: an Equipment Lease Agreement, a primary document, and a Loan and Security Agreement, a Lease Supplement No. 1 and an Loan and Security Agreement Supplement No. 1, all secondary documents relating to the aforesaid primary document.

The names and addresses of the parties to the enclosed documents are:

Equipment Lease Agreement and
Lease Supplement No. 1

Lessor: Wilmington Trust Company, Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001

Lessee: Costain Coal, Inc.
249 East Main Street
Suite 200
Lexington, Kentucky 40507

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OFFICE OF THE
SECRETARY

Ed M. Lewis

(Dennis)

Mr. Sidney L. Strickland, Jr.
December 30, 1993
Page 2

Loan and Security Agreement and
Loan and Security Agreement Supplement No. 1

Debtor: Wilmington Trust Company, Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001

Secured Party: National City Leasing Corp.
101 South 5th Street
Louisville, Kentucky 40202

A description of the railroad equipment covered by the enclosed documents is:
Two Hundred and Fourty (240) Trinity new Aluminum Open Top Hopper Railcars
bearing road marks and numbers CCXX 93100 - CCXX 93339, inclusive.

Also enclosed is a check in the amount of \$72.00 payable to the order of the
Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed documents to the undersigned.

Very truly yours,


RWA

Robert W. Alvord

RWA/bg
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/30/93

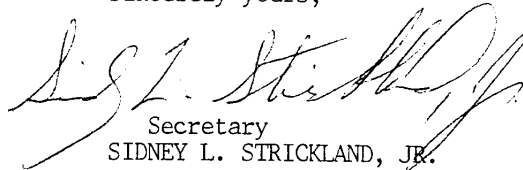
OFFICE OF THE SECRETARY

Robert W. Alvord
Alvord & Alvord
918 16th St N.W. Suite 200
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,
on 12/30/93 at 9:10am, and assigned
recordation number(s). 18509-A, 18631 & 18632 & 18632-A,B,C

Sincerely yours,


Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. **18632** FILED 1425

DEC 30 1993 -9 10 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of December 30, 1993

between

WILMINGTON TRUST COMPANY,
not in its individual capacity except as otherwise expressly
provided herein but solely as Owner Trustee,
Lessor

and

COSTAIN COAL INC.,
Lessee

ROLLING STOCK

CERTAIN RIGHTS, TITLE AND INTEREST OF THE LESSOR IN AND TO THIS LEASE, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF NATIONAL CITY LEASING CORPORATION, AS LENDER UNDER A LOAN AND SECURITY AGREEMENT DATED AS OF DECEMBER 30, 1993, BETWEEN SAID LENDER, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE LENDER AT ITS ADDRESS SET FORTH IN SECTION 22.1 OF THIS LEASE. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY NATIONAL CITY LEASING CORPORATION, AS LENDER, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF.

FILED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO 49
U.S.C. §11303 ON DECEMBER __, 1993 AT _____.M. RECORDATION
NUMBER ____

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EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT dated as of December 30, 1993 (this "*Lease*") between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity, except as otherwise expressly provided herein, but solely as Owner Trustee (in such capacity the "*Lessor*"), and Costain Coal Inc., a Delaware corporation (the "*Lessee*").

RECITALS:

A. The Lessor, subject to the terms and conditions contained herein and in the Participation Agreement, has agreed to purchase all of the Equipment from the Seller thereof and lease such Equipment to the Lessee pursuant to this Lease. The Lessee has agreed to lease all of the Equipment from the Lessor pursuant to this Lease.

B. The Units of Equipment, are set forth in Schedule I attached hereto.

C. The capitalized terms used in this Lease shall have the respective meanings indicated in Annex A to the Participation Agreement dated as of December 30, 1993, among Lessor, Lessee, National City Leasing Corporation, as Lender, Wilmington Trust Company, in its individual capacity, and KeyCorp Leasing Ltd., a Delaware corporation as Owner Participant unless elsewhere defined herein.

SECTION 1. PURCHASE OF EQUIPMENT AND ACCEPTANCE UNDER LEASE.

1.1 **Purchase and Lease of Equipment.** Effective on the Closing Date, if the conditions set forth herein and in the Participation Agreement have been satisfied, (i) the Lessor shall pay the Equipment Cost of the Equipment described in the Bill of Sale delivered on such date, and (ii) the Lessor and Lessee shall conclusively evidence that such Equipment has been made subject to this Lease by executing and delivering a Lease Supplement substantially in the form attached hereto as Exhibit A covering the Equipment so purchased and leased.

1.2 **Acceptance.** The Lessor hereby appoints the Lessee as its agent for inspection and acceptance of the Units. The Lessee's execution and delivery of a Lease Supplement pursuant to this Section 1.2 shall constitute Lessee's acknowledgment, but solely as between the Lessee and the Lessor, that each Unit is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture or condition or in any other respect, and shall conclusively establish, but solely as between the Lessor and the Lessee, that such Unit is in good order and condition and conforms to the Specifications applicable thereto and is suitable for use in interchange service in accordance with the Interchange Rules; provided, however, if a closing does not occur with respect to such Unit pursuant to the Participation Agreement, such acceptance under the Lease shall be automatically revoked and no sale or other transfer of such Unit by Seller to Lessor shall be deemed to have occurred. Notwithstanding the foregoing, the delivery of such Lease

Supplement by the Lessee shall not constitute a waiver or other release of the warranties, liabilities and other obligations of the manufacturers with respect to the Equipment.

SECTION 2. RENT AND RENT PAYMENT DATES.

2.1 Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Unit:

(a) *Basic Rent.* Subject to any adjustments required by Section 2.3 hereof, the Lessee hereby agrees to pay the Lessor for each Unit:

(i) in arrears on each Rent Payment Date occurring during the Basic Term and on the Final Basic Rent Payment Date, Basic Rent in an amount equal to the product of the Equipment Cost for such Unit multiplied by the percentage listed in Schedule 6 to the Participation Agreement opposite the relevant Rent Payment Date;

(ii) in arrears on each Rent Payment Date during any Renewal Term pursuant to Section 20 hereof, Basic Rent in such amounts as provided in such Section 20.

(b) *Supplemental Rent.* In addition to the foregoing Rent, the Lessee agrees to pay to the Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent, promptly as the same shall become due and owing, or, where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor, or who ever shall be entitled to such payment, shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent.

2.2 Business Days. If any of the Rent Payment Dates is not a Business Day, the Rent payment otherwise payable on such date shall be payable on the immediately succeeding Business Day.

2.3 Adjustment of Rent. The Lessee and the Lessor agree that the Basic Rent and Stipulated Loss Values shall be adjusted to the extent provided in Section 2.9 of the Participation Agreement.

2.4 Place and Manner of Rent Payment. All payments by the Lessee hereunder (other than Supplemental Rent payable to Persons other than Lessor, which shall be paid to such other Persons in accordance with written instructions supplied to Lessee by such other Persons, unless otherwise required by the terms hereof or by law) shall be paid to the Lessor by electronic funds transfer to the account of the Lessor provided for payments in Section 22.1 hereof or as otherwise designated from time to time in writing by Lessor; provided, however, that until the Lessee shall have received notice from the Lender that all Secured Indebtedness has been fully paid and satisfied, the Lessee shall make such payments by electronic funds

transfer to the account of the Lender designated in Section 22.1 hereof or as otherwise designated from time to time in writing by the Lender; provided further, however, that all payments in respect of Excepted Rights in Collateral shall be made to the parties entitled thereto. The Lessee agrees that it will make payments due hereunder by electronic funds transfer by 11:00 A.M. (New York time) on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made.

2.5 **Net Lease.** This Lease is a net lease and, except as otherwise expressly provided in the Operative Agreements, the Lessee shall pay all costs and expenses of every character, whether seen or unforeseen, ordinary or extraordinary, in connection with the use, operation, maintenance and repair of the Equipment, including the cost and expenses particularly set forth in this Lease. Notwithstanding any other provision of this Lease, it is intended that Basic Rent and Supplemental Rent shall be paid by the Lessee without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or, except as expressly provided in this Lease, diminution or reduction. The obligations and liabilities of the Lessee hereunder shall in no way be released, discharged or otherwise affected (except as may be expressly provided in this Lease) for any reason, including, without limitation:

- (a) any defect in the condition, quality or fitness for use of the Equipment or any Unit;
- (b) any damage to, abandonment, loss, scrapping or destruction of or any requisition or taking of the Equipment or any Unit;
- (c) any restriction, prevention or curtailment or the interference with any use of the Equipment or any Unit;
- (d) any defect in or any Lien on the Equipment or any Unit;
- (e) any change, waiver, extension, indulgence or other action or omission in respect of any obligation or liability of the Lessor;
- (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Lessee, the Lessor or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, the Lessor or any other Person, or by any court;
- (g) any claim that the Lessee has or might have against the Lessor or any other Person (including the Lender);
- (h) any alleged failure on the part of the Lessor to perform or comply with any of the terms hereof or any other agreement to which Lessor is a party;

- (i) any invalidity or unenforceability or disaffirmance of this Lease or any provision hereof or any of the other Operative Agreements or any provision thereof, in each case whether against or by the Lessee or otherwise;
- (j) any change in the tax or other laws of the United States or any state or political subdivision of either;
- (k) any failure of the Lender to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with the Loan Agreement or any other Operative Agreement;
- (l) any assignment, novation, merger, consolidation, sale or transfer of assets, leasing or other similar transaction of or affecting the Lessee, whether with or without the approval of the Lender, except as expressly provided in this Lease; or
- (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing.

Lessee agrees that all amounts of Basic Rent payable on any Rent Payment Date will be sufficient to cover the full payment of interest and principal scheduled to be paid on the Notes on such date (without giving effect to any acceleration or mandatory prepayment or any increased interest rate following a Loan Default) and that all amounts of Stipulated Loss Value required to be paid by Lessee on a Stipulated Loss Payment Date will be sufficient to cover the full payment of principal and interest and the Premium, if any, scheduled to be paid on the Notes as of such Stipulated Loss Payment Date. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease of any of the Units, except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Lessee nonetheless agrees, to the maximum extent permitted by law, to pay to the Lessor or any other Person entitled thereto an amount equal to each installment of Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Nothing contained herein shall be construed to waive any claim which Lessee might have under any of the Operative Agreements or otherwise or to limit the right of Lessee to make any claim it might have against Lessor, any Participant or any other Person or to pursue such claim in such manner as Lessee shall deem appropriate. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the Rent payments due hereunder, and agrees to make the Rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with this Lease of the Equipment.

SECTION 3. LEASE TERM.

The basic term of this Lease (the "*Basic Term*") shall mean the period for which each Unit is leased, commencing on the Basic Term Commencement Date and, subject to earlier termination pursuant to Sections 11, 15 and 20.1 hereof, shall expire at 11:59 p.m. (New York time) on the Basic Term Expiration Date applicable to such Unit. Subject and pursuant to the terms of Section 20.2 hereof, the Lessee may elect one or more Renewal Terms with respect to any Unit of Equipment.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1 Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to the Lessee.

4.2 Duty to Number and Mark Equipment. The Lessee will cause each Unit to be numbered with a unique reporting mark, as shown on the registry of the AAR and shown on the Lease Supplement for such Unit, and will commencing no later than six months after the Closing Date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon at least one side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

"SUBJECT TO AN EQUIPMENT LEASE AGREEMENT AND
A SECURITY AGREEMENT RECORDED WITH THE
INTERSTATE COMMERCE COMMISSION."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit, its rights under this Lease and the rights of any assignee under Section 18 hereof. Except as provided hereinabove, the Lessee will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked, and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to the Lessor by the Lessee and a supplement to this Lease with respect to such new reporting marks shall be filed or recorded in all public offices where this Lease shall have been filed or recorded.

4.3 Prohibition against Certain Designations. Except as above provided, the Lessee will not allow the name of any Person to be placed on the Equipment as a designation that might reasonably be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee, its sublessees or any of their respective Affiliates on railroad equipment used by it or its sublessees of the same or a similar type.

SECTION 5. DISCLAIMER OF WARRANTIES.

WITHOUT WAIVING ANY CLAIM THAT THE LESSEE MAY HAVE AGAINST ANY SELLER, SUPPLIER OR MANUFACTURER, THE LESSEE ACKNOWLEDGES AND AGREES THAT, (i) THE EQUIPMENT AND EACH UNIT THEREOF IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, (ii) THE LESSEE IS SATISFIED THAT THE EQUIPMENT AND EACH UNIT THEREOF IS SUITABLE FOR ITS PURPOSES, (iii) NEITHER OF THE LESSOR OR ANY PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND OR HAS INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY THE LESSEE, (iv) THE EQUIPMENT AND EACH UNIT THEREOF IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS LEASE, WITHOUT REPRESENTATION OR WARRANTY BY THE LESSOR, (v) THE LESSEE LEASES THE EQUIPMENT AND EACH UNIT THEREOF "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", AND, LESSEE ACKNOWLEDGES THAT NEITHER THE LESSOR NOR ANY PARTICIPANT HAS MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, OR MERCHANTABILITY THEREOF OR AS TO THE TITLE, VALUE OR CONDITION OF THE EQUIPMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, AND (vi) UNDER NO CIRCUMSTANCES WHATSOEVER SHALL TRUST COMPANY, THE LESSOR OR ANY PARTICIPANT BE LIABLE OR RESPONSIBLE TO THE LESSEE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), it being agreed that all such risks, as among the Lessor, each Participant and the Lessee, are to be borne by the Lessee, except that the Lessor, in its individual capacity and as Owner Trustee, represents and warrants that on the Closing Date for any Unit of Equipment, the Lessor shall have received whatever title to such Unit of Equipment as was conveyed to the Lessor by the Seller. The provisions of this Section 5 have been negotiated and, except to the extent otherwise provided in this Section 5 or in the Participation Agreement, the foregoing provisions are intended to be a complete exclusion and negation of any representations and warranties by the Lessor and each Participant, express or implied, with respect to the Equipment that may arise pursuant to any law now or hereafter in effect, or otherwise, but shall not limit or otherwise restrict the representations and warranties of the Owner Participant and the Lessor in the Participation Agreement (including, without limitation, Sections 3.1(e) and 3.5(e) thereof). The Lessor hereby appoints and constitutes the

Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their respective interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the manufacturers or any prior owner thereof; provided, however, that if at any time a Lease Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights.

SECTION 6. RULES, LAWS AND REGULATIONS.

6.1 Compliance with Law. The Lessee agrees to comply in all material respects with all governmental laws, regulations, requirements and rules (including, without limitation, the rules, if any, of the Federal Railroad Administration, the Interstate Commerce Commission and the field manual of interchange rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) (the "*Interchange Rules*") with respect to the title, operation, use and maintenance of each Unit subject to this Lease; provided, further, that the Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not result in a significant risk of a material and adverse effect on the rights or interest of the Lessor or the Lender in the Units and which does not otherwise expose the Lessor or any Participant to any risk of criminal sanctions, so long as any such proceedings are concluded prior to the date on which the Lessee is required to return such Unit to the Lessor. Lessee shall be responsible for obtaining use of the Units and shall bear all risk of failure to obtain such permissions, approvals and consents for use of the Units and shall bear all risk of failure to obtain such permissions, approvals and consents, or of cancellation thereof. The Lessor shall take, at no cost or expense to Lessor, all actions reasonably requested by the Lessee in order to assist the Lessee in obtaining such permissions, approvals or consents.

6.2 Required Modifications. In case any equipment or appliance is required to be altered, added, replaced or modified on any Unit in order to comply with any governmental laws, regulations, requirements and rules (a "*Required Modification*"), the Lessee agrees to make such Required Modification at its own expense; provided, however, that the Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not result in a significant risk of a material and adverse effect on the rights or interest of the Lessor or the Lender in the Units and which does not otherwise expose the Lessor or any Participant to any risk of criminal sanctions, so long as any such proceedings are concluded prior to the date on which the Lessee is required to return such Unit to the Lessor. Title to all Required Modifications shall, without further action by Lessee vest in Lessor.

SECTION 7. MAINTENANCE OF EQUIPMENT; MODIFICATIONS; FOREIGN USE.

7.1 Maintenance. The Lessee shall, at its own cost and expense, maintain and keep the Equipment and each Unit thereof in good operating condition and in good physical condition, ordinary wear and tear excepted, and in all events (i) in accordance with prudent industry maintenance practices, (ii) as may be required to comply with all applicable insurance policies and manufacturer's warranties (iii) in a manner consistent with maintenance practices used by the Lessee in respect of equipment owned or leased by the Lessee similar in nature to the Units, and (iv) in a condition suitable for interchange pursuant to applicable Interchange Rules.

7.2 Modifications. Except as otherwise required by the provisions of Section 6 hereof and so long as no Lease Event of Default has occurred and is continuing prior to the initiation by the Lessee of any modification, addition or improvement to any Unit (a "*Modification*"), the Lessee may make such Modification; provided, however, that no such Modification shall diminish the value, utility, condition or remaining useful life of such Unit below the value, utility, condition, or remaining useful life thereof immediately prior to such Modification, assuming such Unit was then in the condition required to be maintained by the terms of this Lease. Title to any Non-Severable Modifications shall be immediately vested in the Lessor, free and clear of all Liens (other than Permitted Liens), and Lessee shall take whatever actions as may be necessary to ensure that such title is vested in the Lessor, free and clear of all Liens (other than Permitted Liens). Title to any Severable Modifications which are not Required Modifications shall remain with the Lessee. If the Lessee shall at its cost cause any Severable Modification to be made to any Unit and such Severable Modification is reasonably necessary for the economic operation of any such Unit, the Lessor shall have the right, prior to the return of such Unit to the Lessor hereunder, to purchase such Severable Modification at its then Fair Market Sales Value. If the Lessor does not elect to purchase such Severable Modification, the Lessee may at any time remove any Severable Modification that are not Required Modifications at Lessee's cost and expense; provided, however, that prior to the return of the Units hereunder, Lessee shall, at its expense, remove any Severable Modifications that are not Required Modifications if the failure to remove any such Severable Improvement would diminish the value, utility, condition or remaining useful life of such Unit below the value, utility, condition, or remaining useful life thereof if such Severable Modification were not installed on such Unit, assuming such Unit was then in the condition required to be maintained by the terms of this Lease. Title to all Parts of any Unit (other than any Parts which are Severable Modifications but not Required Modifications) shall remain vested in Lessor until a replacement is made therefor. Title to all such replacement Parts shall be immediately vested in Lessor, and upon such replacement title to the Part so replaced shall be vested in Lessee.

7.3 Foreign Use. The Lessee shall not at any time allow any Unit to be located outside of the continental United States; provided, however, that Lessee shall be entitled to use the Equipment in Canada and Mexico, so long as in no event more than 10% of the Units shall be used (as determined by mileage records) outside the continental United States (exclusive

of Alaska) at the same time and provided, further, that Lessee shall not be subject to such 10% use restriction in either of Canada or Mexico or any political subdivision thereof (a "*Foreign Jurisdiction*"), if Lessee shall have delivered to Owner Participant and the Lender a legal opinion in form and scope reasonably satisfactory to Owner Participant and Lender of independent counsel, selected by Lessee and reasonably acceptable to Owner Participant and the Lender, stating that under the laws of such Foreign Jurisdiction (i) the ownership interests of the Owner Trustee and security interest of the Lender in Units located in such Foreign Jurisdiction can be perfected with rights, priorities and remedies as against third parties and sublessees substantially comparable to the rights, priorities and remedies of Owner Trustee and the Lender in Units located in the United States, (ii) all filings, notices, recordings or other actions necessary or appropriate to perfect such rights have been made, (iii) the Lease is enforceable and would be enforced by courts in such Foreign Jurisdiction in accordance with its terms against Units located in such Foreign Jurisdiction to substantially the same extent as in the United States, and (iv) Lessee shall pay all of Lessor's, Owner Participant's and the Lender's reasonable out-of-pocket expenses incurred in connection with such transaction. In no event shall the Lessee make use of any Equipment in any jurisdiction not included in the insurance coverage maintained by Lessee pursuant to this Lease.

SECTION 8. LIENS ON THE EQUIPMENT.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Units or the Lessee's leasehold interest therein under this Lease, except Permitted Liens, Lessor's Liens and Lender's Liens and the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien not excepted above if the same shall arise at any time. The Lessee shall protect, save and keep harmless each Indemnified Person from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable attorneys' fees) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time (whether before, during or after the Lease Term) against such Indemnified Person in any way relating to or arising out of any such Lien except Permitted Liens, Lessor's Liens and Lender's Liens.

SECTION 9. FILING.

9.1 **Closing Date.** On or prior to the Closing Date, the Lessee will, at its expense, (i) cause this Lease, the Lease Supplement dated such Closing Date, the Loan Agreement and the Loan Supplement dated such Closing Date, to be duly filed and recorded with the ICC in accordance with 49 U.S.C. §11303, (ii) cause Uniform Commercial Code financing statements naming the Owner Trustee as debtor and the Lender as secured party, and the Owner Participant as debtor and the Lender as secured party, to be filed in such public offices as are deemed necessary or appropriate by the Lessor or any Participant to perfect the right, title and interest of the Lender in the Collateral and Uniform Commercial Code financing statements naming the Lessee as debtor, the Owner Trustee as secured party and the Lender as assignee of the secured party (but expressing the intention of the parties that this Lease is a

lease and not a security agreement) to be filed in such public offices as are deemed necessary or appropriate by each Participant to perfect the right, title and interest of the Lender as assignee of the Owner Trustee in the Equipment, and (iii) file, register or record this Lease, the Lease Supplement, the Loan Agreement and the Loan Supplement and all financing and continuation statements and similar instruments, in such other places within the United States as the Lessor or any Participant may reasonably request in writing at least ten (10) days prior to such Closing Date, and will furnish the Lessor and the Lender with the proof thereof. Promptly and, in any event, within twenty-one (21) days after the Closing Date the Lessee will cause this Lease, the Lease Supplement dated such Closing Date, the Loan Agreement and the Loan Supplement dated such Closing Date, to be deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and cause notice of such deposit to be forthwith given in The Canada Gazette in accordance with said Section 90.

9.2 Further Assurances. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all amendments or supplements to this Lease or to the Loan Agreement, any financing statements or similar instruments, and any and all further instruments required by law or reasonably requested in writing by the Lessor or the Lender, for the purpose of protecting the Lessor's title to, or the Lender's security interest in, any Unit.

9.3 Costs. Except as provided in Section 2.8 of the Participation Agreement, the Lessee will pay all costs, charges and expenses (including reasonable attorneys' fees) incident to any such filing, refiling, recording and rerecording or depositing and re-depositing of any such instruments or incident to the taking of such action.

SECTION 10. INSURANCE.

10.1 Insurance Requirement. (a) The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained (i) "all risk" property insurance in respect of the Units at the time subject hereto and in an amount not less than the greater of the aggregate replacement value or Stipulated Loss Value for all Units from time to time subject hereto and (ii) public liability insurance in an amount not less than \$21,000,000 per occurrence with respect to third-party personal injury, death and property damage (including contractual liability insurance), and the Lessee will continue to carry such insurance in each case, in such amounts and for such risks and with such insurance companies of recognized responsibility in each case as is consistent with prudent industry practice for Persons using or leasing rail equipment similar to the Units, but in any event not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The Lessee warrants and affirms that it will satisfy all obligations under each such policy necessary to keep such insurance in full force and effect. All insurance maintained by Lessee hereunder may be subject to commercially reasonable deductibles and self-insurance practices consistent with prudent industry practice and Lessee's practice with respect to other equipment similar to the

Units; provided, however, Lessee shall not self-insure or maintain deductibles greater than \$5,000,000 (so long as the Lessee has a tangible net worth equal to or greater than \$150,000,000) and otherwise not greater than \$1,000,000.

(b) All insurance policies required to be maintained by the Lessee pursuant to this Section 10.1 shall (i) name and insure the Lessor, in both its individual and trustee capacities, and each of the Participants as additional insureds with respect to the public liability insurance and with respect to property insurance shall cover the interests of each such Person as its interests may appear under the Operative Agreements, (ii) provide that the proceeds of property insurance on the Equipment shall be payable to the Lender under a standard mortgage loss payable clause reasonably satisfactory to the Lender so long as any Notes shall remain outstanding and thereafter to the Lessor and the Lessee, as their interests may appear, (iii) provide that the respective interests of the Lessor, in both its individual and trustee capacities, and each Participant shall not be invalidated or, except as provided in clause (v) below, cancelled, by any action or inaction by the Lessee or any other Person (other than claimant), (it being understood that this clause (iii) is not intended to expand the scope of insurance coverage otherwise provided), (iv) shall insure the Lessor, in both its individual and trustee capacities, and each Participant regardless of any breach or violation by the Lessee or any other Person (other than claimant) of any warranties, declarations or conditions in such policies, (v) provide that the Lessor, in both its individual and trustee capacities, and each of the Participants will be furnished with at least thirty (30) day's prior written notice (or in the case of non-payment, of premiums, ten (10) day's) of any cancellation or material change in the types or limits of coverage during the term of any policy prior to such cancellation or change of coverage, (vi) provide that such insurance is primary without any right of contribution from any other insurance carried by the Lessor, in both its individual and trustee capacities, or any of the Participants, (vii) expressly provide that all provisions, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each such additional insured, (viii) provide that the insurers waive any rights of setoff, recoupment, counterclaim, deduction, or subrogation (in the case of property insurance, to the extent available) against the Lessor, in both its individual and trustee capacities, and each of the Participants and (ix) without limiting the insurer's right to cancel coverage for non-payment of premium acknowledge that any obligation imposed on the Lessee (including without limitation the liability to pay premiums, calls, commissions, or assessments) shall be the sole obligation of the Lessee and not the obligation of the Lessor, in either its individual or trustee capacity, or any of the Participants.

(c) Within thirty (30) days following the expiration of any policy of insurance, the Lessee shall furnish the Lessor, in both its individual and trustee capacities, and each Participant with an Officer's Certificate and a certificate signed by the insurer or a reputable independent insurance broker, each showing the insurance then maintained by the Lessee pursuant to this Section 10.1, confirming all premiums then due thereon have been paid, and that such insurance meets all requirements of this Section 10. With respect to any renewal policy or policies, the Lessee shall furnish certificates or binders signed by reputable insurers or insurance brokers evidencing such renewal as soon as practicable, but in no event

later than thirty (30) days after such renewal is effected or ten (10) days after the expiration date of the original policy or policies.

10.2 Proceeds of Insurance. Subject to the provisions of Section 10.1 hereof, to the extent permitted by the terms of applicable insurance coverage, any loss under the property insurance policy referred to above shall be adjusted with the Lessee (subject to the reasonable approval of the Lessor and the Lender, if such loss exceeds \$1,750,000). The entire proceeds of any property or casualty insurance for damages to any Unit of Equipment shall be paid over to the Lender so long as the Lien of the Loan Agreement is outstanding and otherwise to the Lessor, and shall be held by such party until the repairs referred to in clause (a) below are made as specified therein or payment of the Stipulated Loss Value is made, and such entire proceeds will be paid either: (a) to the Lessee promptly following receipt by the Lender or the Lessor, as the case may be, of a written application signed by the Lessee for payment to the Lessee for repairing or restoring any Unit which has been damaged so long as (i) the Lessee shall have complied with the applicable provisions of this Lease, (ii) no Lease Event of Default shall have occurred and be continuing, and (iii) any damage to such Unit shall have been fully repaired or restored, and the Lessee shall have delivered with such application a certificate executed by an engineering or financial officer of the Lessee to such effect; or (b) if this Lease is terminated with respect to such Unit because of an Event of Loss and the Lessee has paid the Stipulated Loss Value due as a result thereof, such proceeds shall be promptly paid over to the Lessee.

10.3. Additional Insurance. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option, upon ten (10) Business Days' prior written notice to the Lessee, provide such insurance and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, from the date of payment thereof, on such amount, at the Late Rate. In addition, at any time the Lessor or the Lender may at its own expense carry insurance with respect to its interest in the Units, provided that such insurance does not prevent the Lessee from carrying insurance required by this Section 10 or adversely affect such insurance or the cost thereof and provides that the insurer waives any right of subrogation against the Lessee with respect to claims thereunder (it being understood that all salvage rights shall remain with the Lessee's insurers at all times). Any insurance payments received from policies maintained by the Lessor or the Lender pursuant to the previous sentence shall be retained by the Lessor or the Lender, as the case may be, without reducing or otherwise affecting the Lessee's obligations hereunder.

SECTION 11. EVENT OF LOSS.

11.1 Duty of Lessee to Notify Lessor. In the event that any Unit shall (a) suffer an actual or constructive total loss or destruction, damage, contamination or wear which, in the Lessee's good faith opinion, makes repair uneconomical, (b) suffer theft or disappearance for a period in excess of one-hundred eighty (180) days, (c) be permanently returned to the manufacturer pursuant to any indemnity provisions, (d) have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, (e) be taken

or requisitioned for use by any governmental authority under the power of eminent domain or otherwise for a period extending beyond the earlier of (i) twelve (12) months after the date of such taking or requisition, or (ii) the last day of the Basic Term or any Renewal Term then in effect or (f) be banned from use in the normal course of interstate rail transportation for a period extending beyond the earlier of (i) one hundred eighty (180) days or (ii) the last day of the Basic Term or Renewal Term then in effect as a result of any rule, regulation, order or other action of the United States government or any agency or instrumentality thereof, unless the Lessee shall have undertaken and be diligently pursuing such actions as shall be required to by the government or agency to permit normal use of such Unit (any such occurrence being hereinafter called an "*Event of Loss*"), the Lessee, in accordance with the terms of Section 11.2 hereof, shall promptly and fully inform the Lessor and the Lender of such Event of Loss. The date of occurrence of such Event of Loss shall be the date of such loss, destruction, damage, contamination, theft, disappearance, return, taking or requisition; provided that in the case of an Event of Loss specified in clause (b) above, the date of occurrence of such Event of Loss shall be deemed to be one hundred eighty (180) days after such theft or disappearance, and in the case of an Event of Loss specified in clause (e) or (f) above, the date of occurrence of such Event of Loss shall be deemed to be the earlier of (A) twelve (12) months in the case of clause (e) and one hundred eighty (180) days in the case of clause (f) after the date of such taking or requisition or ban, or (B) the last day of the Basic Term or any Renewal Term then in effect.

11.2 Sum Payable for Event of Loss. Except as provided in Section 11.7, on a Stipulated Loss Payment Date selected by Lessee, but in no event later than thirty (30) days after the occurrence or deemed occurrence of such Event of Loss for any Unit, the Lessee shall pay to the Lessor (a) an amount equal to the Stipulated Loss Value of each such Unit as of such Stipulated Loss Payment Date less any amounts of insurance proceeds or condemnation awards applied by the Lender as provided in Sections 3.01(c) or 3.01(d) of the Loan Agreement, (b) if such Stipulated Loss Payment Date is a Rent Payment Date, all Basic Rent payable on such date in respect of such Unit and (c) all other Rent then due and payable hereunder.

11.3 Rent Termination. Upon the payment of all sums required to be paid pursuant to Section 11.2 hereof in respect of any Unit or Units the Lease Term for such Unit or Units, and the obligation to pay Basic Rent for such Unit or Units shall terminate and no Basic Rent with respect to such Units shall thereafter be due.

11.4 Disposition of Equipment. Upon the payment of all sums required to be paid pursuant to Section 11.2 hereof in respect of any Unit or Units, the Lessor will convey to the Lessee all right, title and interest of Lessor and any Affiliate thereof, "as-is", "where-is", without recourse or warranty, except for a warranty against Lessor's Liens, in and to such Unit or Units and shall execute and deliver to Lessee such bills of sale and other documents and instruments as Lessee may reasonably request to evidence such conveyance. As to each separate Unit so conveyed to Lessee, the Lessee shall own such Unit free and clear of all claims of Lessor, Lender or any other Person claiming through Lessor, and shall have the unrestricted right to dispose of such Unit and retain any amounts arising from such disposition,

plus any awards, insurance or other proceeds and damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by the Lessee, the Lessor or the Lender by reason of such Event of Loss; provided, however, that, with respect to any Event of Loss referred to in clauses (d) and (e) of Section 11.1 hereof, any excess of such condemnation awards over the amount of the Stipulated Loss Value of such Unit shall be divided between the Lessee and the Lessor in proportion to their respective interests in such Unit.

11.5 Stipulated Loss Value. The Stipulated Loss Value for any Unit as of any Stipulated Loss Payment Date shall be equal to the amount determined by multiplying the Equipment Cost for such Unit by the percentage on Schedule 7 to the Participation Agreement applicable for such Stipulated Loss Payment Date; provided, however, that, notwithstanding any provision of this Lease (including, without limitation, the adjustments to be made pursuant to Section 2.3 hereof), "Stipulated Loss Value" with respect to any Unit as of any payment date, plus the Basic Rent in respect of such Unit payable on such payment date, shall in no event be less than a sum sufficient to pay that portion of the aggregate unpaid principal amount of the Notes outstanding and scheduled to be prepaid on such payment date together with scheduled interest thereon due on such payment date as determined pursuant to the Loan Agreement.

11.6 Eminent Domain. In the event that during the Lease Term the use of any Unit is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, the Lessee's obligation to pay all installments of Basic Rent shall continue for the duration of such requisitioning or taking. So long as no Lease Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for such requisition or taking of possession.

11.7 Replacement of Unit. In lieu of making the payment required by Section 11.2, the Lessee may, by election given in writing to Lessor and the Lender, within the thirty (30) day period provided in Section 11.2 hereof, convey or cause to be conveyed within sixty (60) days after the end of such thirty (30) day period to Lessor a replacement railcar to be leased to Lessee hereunder, such railcar to be of the same car type (or otherwise approved by Lessor and the Lender, which approval shall not be unreasonably withheld), the same or a later year of manufacture of the Unit replaced and free and clear of all Liens and to have a Fair Market Sales Value, utility, remaining economic useful life, residual value and condition at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the Terms of this Lease) (a "*Replacement Unit*"); provided that, if Lessee shall fail to perform its obligation to effect such replacement within such sixty (60) period then at the end of such sixty (60) day period Lessee shall immediately give Lessor and Lender notice of such failure and pay to Lessor the sum payable pursuant to Section 11.2 hereof.

At its own cost and expense, Lessee shall, prior to or concurrently with such replacement:

- (i) furnish Lessor with a bill of sale conveying to Lessor the Replacement Unit;
- (ii) cause a Loan Supplement and Lease Supplement, subjecting such Replacement Unit to the lien of the Loan Agreement and to this Lease, duly executed by Lessee, to be delivered to Lessor and Lender for execution, and upon such execution to be filed with the ICC pursuant to 49 U.S.C. §11303; and
- (iii) cause to be delivered to the Lessor and the Lender an opinion of ICC counsel as to the due filing of such Lease Supplement and Loan Supplement with respect to such Replacement Unit and the perfection and priority of the Lien of the Loan Agreement in such Replacement Unit.

For all purposes of this Lease, upon passage of title in such Replacement Unit to the Lessor, such Replacement Unit shall be deemed to be part of the property leased hereunder and shall be deemed to be a Unit. Upon such passage of title, (a) Lessor will transfer to Lessee without recourse or warranty (except as to Lessor's Liens), all of Lessor's right, title and interest in and to the Unit with respect to which the Event of Loss occurred, (b) Lessee shall own such Unit free and clear of all claims of Lessor, Lender or any other Person claiming through Lessor, and shall have the unrestricted right to dispose of such Unit and retain any amounts arising from such disposition, and (c) any awards, insurance (other than insurance maintained pursuant to the second sentence of Section 10.3 hereof) or other proceeds or damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by the Lessor, the Lender or any other Person in respect of such Unit shall be promptly paid to Lessee.

SECTION 12. EARLY TERMINATION.

12.1 Surplusage. (a) So long as no Lease Event of Default shall have occurred and be continuing, the Lessee shall have the right, at its option at any time and from time to time on at least one hundred eighty (180) days' prior notice to the Lessor and the Lender, to terminate this Lease as of the Rent Payment Date specified in such notice (the "*Termination Date*") occurring on or after December 30, 2001, with respect to not less than 25% of the Units then leased under this Lease (except that if, as a result of the exercise of the option under this Section 12, less than 60 Units would remain leased under this Lease, then all but not less than all of the Units then leased under this Lease) (collectively the "*Terminated Units*"), randomly selected by Owner Participant by road number without regard to the condition of such Units, prevailing interest rates or discrimination as to other equipment owned or leased by the Lessee similar in nature and use to the Units, if Lessee determines in good faith, that such Units have become surplus to the Lessee's needs and Lessee shall provide the Lessor with a certificate executed by the chief financial officer of the Lessee indicating such determination and including a certified copy of a resolution of the board of directors of Lessee to such effect. During the period from the date of such certificate to the Termination Date, the Lessee, as exclusive agent for the Lessor and at Lessee's sole cost and expense, shall use its reasonable best efforts to obtain bids from Persons other than the Lessee or Affiliates thereof for the cash purchase of the Terminated Units, and the Lessee shall promptly, and in any event at least

fifteen (15) Business Days prior to the proposed date of sale, certify to the Lessor in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the party submitting such bid. Lessee may at any time prior to thirty (30) days before such Termination Date, by notice in writing to the Lessor and the Lender, withdraw its notice of termination and Lessee shall pay all of Lessor's, Owner Participant's and the Lender's reasonable out-of-pocket expenses incurred in connection with the proposed termination. On the Termination Date: (A) the Lessee shall deliver the Terminated Units to the bidder, if any, which shall have submitted the highest cash bid prior to such date, in the same manner as if delivery were made to the Lessor pursuant to Section 14 hereof and in full compliance with the terms thereof; and (B) the Lessor shall, without recourse or warranty (except as to the absence of any Lessor's Lien) and subject to the disclaimer set forth in Section 5 hereof, simultaneously therewith sell the Terminated Units to such bidder for cash paid in the manner and in funds of the type specified in Section 2.4 hereof.

(b) As between the Lessor and the Lessee, the total selling price realized at such sale shall be paid to and retained by the Lessor and, in addition, on the Termination Date, and as a condition precedent to such sale and the delivery of the Terminated Units to such purchaser, the Lessee shall pay to the Lessor, in the manner and in funds of the type specified in Section 2.4 hereof, (i) all unpaid Basic Rent with respect to such Terminated Units due on or prior to the Termination Date, (ii) the excess, if any, of (A) the Stipulated Loss Value for the Terminated Units computed as of the Termination Date in accordance with Section 12.2 hereof, over (B) the net cash sales proceeds (after payment of any sales taxes or other expenses incurred in connection with such sale) of the Terminated Units and (iii) any other Rent (including, without limitation, the Premium, if any) required to be paid as of such Termination Date. If no sale shall have occurred or if the Notes have not been paid as contemplated in clause (d) below on or as of the Termination Date, this Lease shall continue in full force and effect as to such Units; provided, however, that the Lessee shall not, without the consent of the Lessor, reject any cash bid equal to or greater than the Stipulated Loss Value. If the Lessor elects not to exercise its preemptive right set forth in paragraph (c) immediately below, the Lessee, in acting as agent for the Lessor, shall have no liability to the Lessor for failure to obtain the best price, shall act in its sole discretion and shall be under no duty to solicit bids publicly or in any particular market.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this Section 12.1, the Lessor may irrevocably elect, no later than ninety (90) days after receipt of the Lessee's notice of termination, not to sell the Terminated Units to the highest bidder, if any, on the Termination Date, whereupon the Lessee shall deliver the Terminated Units to the Lessor as provided in this Section 12, treating the Termination Date as the termination date of the Lease Term with respect to the Terminated Units; provided, that (i) the Lease Term for such Equipment shall not terminate until the Lessor has made the payment to the Lender required by the immediately following sentence and the Lessee has delivered such Equipment and paid all Basic Rent for such Terminated Units due and unpaid to and including the Termination Date and any other Rent (including, without limitation, the Premium, if any, as set forth in Section 12.1(d) hereof) and (ii) upon making such payments, the Lessee shall have no obligation to pay any Stipulated Loss Value with respect to such Terminated Units. If the

Lessor elects not to sell the Terminated Units as provided in this Section 12.1(c), then the Lessor shall pay to the Lender, on such Termination Date, the portion of Stipulated Loss Value of such Terminated Units required to be paid to the Lender pursuant to Section 3.02(a)(2) of the Loan Agreement, including the outstanding principal amount of, and accrued interest on the Notes.

(d) If the Lessee elects to terminate this Lease with respect to any or all of the Units pursuant to Section 12.1(a) hereof, then the Lessee shall pay, on such Termination Date, the Premium then required to be paid under Section 3.02(a)(2) of the Loan Agreement in connection with the related prepayment of the Notes.

(e) In the event of any such sale and receipt by the Lessor and the Lender of all of the amounts provided herein, and upon compliance by the Lessee with the other provisions of this Section 12.1, the obligation of the Lessee to pay Basic Rent hereunder for such Terminated Units shall cease and the Lease Term for the Terminated Units shall end.

12.2 Stipulated Loss Value. The Stipulated Loss Value of any Unit as of any Termination Date shall be equal to the amount determined by multiplying the Equipment Cost for such Unit by the percentage specified in Schedule 7 opposite such Termination Date; provided, however, that, notwithstanding any provision of this Lease (including, without limitation, the adjustments to be made pursuant to Section 2.3 hereof), "Stipulated Loss Value" as of any payment date, plus the Rent in respect of such Unit payable on such payment date and the amount payable pursuant to Section 12.1(d) hereof shall in no event be less than a sum sufficient to pay a pro rata portion of the aggregate unpaid principal amount of the Notes outstanding and scheduled to be prepaid on such payment date together with scheduled interest thereon due on such payment date and the Premium as determined pursuant to the Loan Agreement.

SECTION 13. NOTICES OF CERTAIN EVENTS; ANNUAL REPORTS; INSPECTION.

13.1 Notice of Certain Events. The Lessee shall give written notice to the Lessor and the Lender, within five (5) Business Days after becoming known to a Responsible Officer of Lessee, of any Lease Default or Lease Event of Default.

13.2 Duty of Lessee to Furnish. On or before June 30, 1994, and on each June 30 thereafter, the Lessee will furnish, upon request, to the Lessor and the Lender an accurate statement, as of the preceding December 31, (a) showing the amount, description and reporting marks of the Units then leased hereunder, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the twelve (12) months ending on such December 31 (or since the Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

13.3 Lessor's Inspection Rights. The Lessor (or its designee) and the Lender each shall have the right, but not the obligation, at their respective sole cost, expense and risk, except as provided below, by their respective authorized representatives, to the extent within Lessee's control: (a) to inspect the Equipment and the Lessee's records with respect thereto and make copies thereof, during the Lessee's normal business hours and upon reasonable prior notice to the Lessee, subject to the Lessee's standard procedures and, if so elected by Lessee, accompanied by a representative of Lessee, and (b) to discuss the affairs, finances and accounts with the principal officers of the Lessee; provided, however, that the Lessee shall not be liable, except in the case of gross negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor, any Participant or any prospective purchaser, the rights of inspection granted under this Section 13.3 or Section 14.1 hereof. No such inspection shall interfere with the normal operations or business of Lessee, and provided no Lease Default shall have occurred and be continuing, each of Owner Participant (or its designee) and Lender may make no more than one (1) inspection in any twelve (12) month period, provided that Owner Participant (or its designee) and Lender will exercise commercially reasonable efforts to coordinate such inspections to occur simultaneously.

SECTION 14. RETURN OF EQUIPMENT UPON EXPIRATION OF LEASE TERM.

14.1 Return of Equipment; Storage.

(a) If Lessee does not exercise its purchase option under Section 20.1, then as soon as practicable on or after the expiration of the Basic Term or any Renewal Term of this Lease, as the case may be, and in any event not later than ten (10) days thereafter, the Lessee will, at its own cost and expense, deliver possession of all of the Units then subject to this Lease to one or more locations, selected by Lessee from the four (4) interchange points of any Class I Railroad within 500 miles of Lexington, Kentucky, designated by the Lessor by notice to Lessee not less than sixty (60) days prior to such delivery, provided, however, that Lessee shall not deliver less than the greater of (x) 25% of the Units then subject to this Lease or (y) ten (10) Units to any one such interchange point.

(b) At Lessor's request, Lessee shall, at its expense, provide storage at not more than four (4) locations chosen by Lessee for each Unit for a period not exceeding ninety (90) days after Lessee's delivery of 75% of the Units to a storage location and, upon not less than fifteen (15) days' prior written notice, transport the same once upon disposition of the Units, at any time within such ninety (90) day period, to any return location determined pursuant to Section 14.1(a) hereof, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. The Lessee shall not be obligated to move any such Unit more than once at the request of the Lessor. During any such storage period, the Lessee will permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same, accompanied by a representative of Lessee; provided, however, that the Lessee shall not be liable, except in the case of gross negligence or willful misconduct of the

Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. During any such storage period the Lessee shall be responsible for loss of or damage to such Units in accordance with the terms of this Lease. Upon the return of any Unit of Equipment, Lessee covenants that such Units shall be (i) free and clear of all Liens other than Lessor Liens and (ii) in the condition required by Sections 6 and 7 hereof. The Lessee shall on or prior to return of any Unit take such action and complete and execute, or obtain execution of, such certificates, including certificates required under Rule 88 (or any successor rule) of the AAR, and other documents as shall be required by the AAR to assure that such Unit is permitted to enter interchange service after return to Lessor or its designee. If the Lessor or its agent shall inspect any Unit pursuant to this Section 14 and such Unit shall not be in the condition required by this Section 14, the Lessee, at its expense and risk, shall within sixty (60) days thereafter make such repairs and perform such work as shall be necessary to place such Units in the condition required by this Section 14. The Lessee will provide the Lessor with notice when such Unit has been repaired so as to be in the condition required by this Section 14 and is ready to be reinspected by the Lessor or its agent, and the Lessor or its agent shall have ten (10) days from the date of receipt of such notice to inspect, at the Lessee's sole cost and expense, such Unit. In the event any Unit is not returned to Lessor as hereinabove provided as a result of any action or inaction on the part of the Lessee, within ten (10) days after the date on which such return was required pursuant to the terms hereof, the Lessee shall pay to the Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of the Lessee to return such Unit to the Lessor in accordance with the terms of this Lease with respect to such Unit as required by the provisions of this Section 14, an amount equal to 125% of the daily equivalent of the greater of (i) the arithmetic average of the Basic Rent during the Basic Term of such Unit and (ii) the Fair Market Rental Value for such Unit at the time of such expiration. The provision for such payment shall not abrogate the Lessor's right under this Section 14 to have such Unit returned to it hereunder. Upon expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and tender of such Unit at such storage location by Lessee, this Lease and the obligation to pay Basic Rent and all other Rent for such Unit accruing subsequent to the expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and the tender of such Unit at such storage location by the Lessee, shall terminate.

14.2 Condition. Without limiting the Lessee's obligations under Section 14.1 hereof, each Unit redelivered hereunder shall be (i) in a condition suitable for the purpose and use for which it was originally intended (hauling of coke, coal, coal ash or rock) and (ii) in such operating condition and repair that such Unit can be put into service by Lessor for the hauling of coke, coal, coal ash or rock or by another party, without having to undergo additional maintenance, or rebuilding, as such terms are commonly understood in the industry. In addition, Lessee, at Lessee's sole cost and expense, shall remove or paint over all company logos of Lessee.

SECTION 15. LEASE EVENTS OF DEFAULT.

15.1 Lease Events of Default. Any of the following events shall constitute a Lease Event of Default hereunder:

(a) The Lessee shall default in the payment when due of (i) any installment of Basic Rent and such default shall continue unremedied for five (5) Business Days or (ii) any amount payable pursuant to Section 11.2 hereof and such default shall continue unremedied for five (5) Business Days;

(b) The Lessee shall default in the payment when due of any Supplemental Rent, other than as specified in Section 15.1(a) hereof, including indemnity or tax indemnity payments, and such default shall continue unremedied for a period of ten (10) Business Days after receipt by the Lessee of written notice thereof;

(c) Any representation or warranty made by the Lessee in this Lease or in any other Lessee Agreement (other than the Tax Indemnity Agreement), or in any statement or certificate furnished to the Lessor, the Owner Participant or the Lender pursuant to or in connection with this Lease or any other Lessee Agreement is untrue or incorrect in any material respect as of the date of the making thereof and such incorrectness shall continue to be material and unremedied;

(d) The Lessee shall fail to maintain the insurance required pursuant to Section 10 hereof;

(e) The Lessee shall default in the observance or performance of any other of the covenants and agreements on the part of the Lessee contained herein or in the other Lessee Agreements, and such default shall continue for thirty (30) days after receipt by Lessee of written notice thereof, specifying the default and demanding the same to be remedied; provided, however, no Lease Event of Default shall occur under this paragraph (e) if (i) the Lessee is diligently attempting to cure such default, (ii) such default is capable of being cured but cannot be cured within such thirty (30) days, (iii) such default does not impair in any material respect the Lessor's interest in the Units or the security interest of the Lender under the Loan Agreement and (iv) such default is cured within one hundred fifty (150) days after such written notice;

(f) The Lessee (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or the major part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against

it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any corporate action to authorize any of the foregoing; or

(g) An involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or the major part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

15.2 Remedies. Upon the occurrence of any Lease Event of Default and at any time thereafter so long as such Lease Event of Default is continuing, the Lessor may, upon written notice to Lessee, at its option, declare this Lease to be in default and whenever any Lease Event of Default under any provision of Section 15.1(f) or (g) hereof shall have occurred, this Lease shall automatically be in default, and at any time after the Lease has been declared to be in default or has automatically become in default pursuant to the foregoing provisions, the Lessor may do one or more of the following as the Lessor in its sole discretion shall elect, to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(b) By notice in writing to the Lessee, cancel this Lease, whereupon all right of the Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may (i) demand that Lessee, and Lessee shall upon written demand of Lessor, at Lessee's expense, return to Lessor all or any of the Units (as specified in such demand) in the manner and condition required by, and otherwise in accordance with the provisions of Section 16 hereof, or (ii) by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successor or assigns, to use such Units for any purpose whatever;

(c) Sell any Unit at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if the Lessor elects to exercise its rights under said paragraph), in which event the Lessee's obligation to pay Basic Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that

Basic Rent are to be included in computations under paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs);

(d) Hold, keep idle, operate, assign or lease to others any Unit as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto; provided, however, that Lessee's obligation to pay Basic Rent with respect to any Unit of Equipment due for any period after the date upon which the Lessee shall have been deprived of the possession and use of such Unit of Equipment pursuant to this Section 15 shall be reduced by the net proceeds, if any, received by the Lessor from leasing such Unit to any Person other than the Lessee;

(e) Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b), (c) or (d) above with respect to any Unit, the Lessor, by notice to the Lessee specifying a payment date which shall be not earlier than ten (10) Business Days after the date of such notice, may demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Stipulated Loss Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for such Unit due after the payment date specified in such notice), any unpaid Rent for such Unit due for periods on or prior to the payment date specified in such notice, plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to the excess, if any, of (A) the present value of all future Basic Rent for such Unit, over (B) the present value of the Fair Market Rental Value (determined as hereafter in Section 15.4 provided) of such Unit or, if the Lessor has leased such Unit to others pursuant to paragraph (d) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Basic Term or any Renewal Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the lesser of the Prime Rate or the Note Rate, compounded monthly, from the respective dates upon which such rents would be paid; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit as of such Stipulated Loss Payment Date, over the Fair Market Sales Value of such Unit (determined as hereafter in Section 15.4 provided) as of the payment date specified in such notice;

(f) If the Lessor shall have sold any Unit pursuant to paragraph (c) above, the Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Unit may, if it shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and any other Basic Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale), any unpaid Basic Rent for such Unit

due for periods up to and including the Rent Payment Date next preceding the date of such sale and, if that date is a Rent Payment Date, the Basic Rent due on that date, plus (i) the amount, if any, by which the Stipulated Loss Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale and (ii) any Supplemental Rent due and owing; and

(g) The Lessor may, in lieu of exercising its rights under paragraph (e) above: (i) retain all Rent theretofore paid by the Lessee or received by the Lessor in respect of any Unit, including any such Rent then in the Lessor's possession which, had this Lease not been declared in default, would otherwise be payable to the Lessee hereunder; (ii) recover from the Lessee all Rent accrued and unpaid under any of the terms hereof as of the date of the declaration of default; and (iii) on any Stipulated Loss Payment Date, transfer title to and the ownership interest in such Unit to the Lessee by quit-claim bill of sale (except as to the absence of any Lessor's Liens), and recover from the Lessee as liquidated damages for loss of a bargain, but not as a penalty (in lieu of the Basic Rent for such Unit due subsequent to the date of the declaration of default), in the Lessor's sole discretion, an aggregate sum equal to the Stipulated Loss Value of such Unit calculated as of such Stipulated Loss Payment Date.

15.3 Other Liabilities. In addition, the Lessee shall be liable, except as otherwise provided in Section 15.2 above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

15.4 Valuation. For purposes of Section 15.2 hereof, the Fair Market Rental Value and Fair Market Sales Value for any Unit shall be determined by appraisal as specified in the definition of "Fair Market Rental Value" or "Fair Market Sales Value", as the case may be, with any appraisal expenses to be borne by the Lessee.

15.5 Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity.

15.6 No Waiver. No delay or omission to exercise any right, power or remedy accruing to the Lessor upon any breach or default by the Lessee under this Lease shall impair any such right, power or remedy of the Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter

occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

SECTION 16. RETURN OF EQUIPMENT UPON LEASE EVENT OF DEFAULT.

16.1 Lessee's Duty to Return. (a) If the Lessor shall cancel this Lease pursuant to Section 15.2 hereof and shall not exercise any right to cause Lessee to purchase the Equipment, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Unit to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(i) Forthwith place such Unit upon such available storage locations under Lessee's control as reasonably directed by the Lessor and such Units shall be in the same condition as if such Units were being redelivered on or after the expiration of the Basic Term or any Renewal Term;

(ii) Permit the Lessor to store such Unit at such location without charge for insurance, rent or storage for up to 365 days until such Unit has been sold, leased or otherwise disposed of by the Lessor, and during such period of storage by Lessee shall continue to maintain all insurance required by Section 10.1 hereof; and

(iii) Transport such Unit one time to a railroad interchange point on the lines of a Class I railroad within 500 miles of Lexington, Kentucky chosen by Lessee from two (2) such locations designated by Lessor.

(b) Each such Unit will be free and clear of all Liens, other than Lessor's Liens and Lender's Liens, and in the condition required by Sections 6 and 7 hereof and otherwise in compliance with Section 14.1 hereof.

16.2 Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 16, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Units to the Lessor pursuant to this Section 16, to demand and take possession of such Unit, in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

16.3 Specific Performance. Upon application to any court of equity having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring specific performance of the provisions of this Section 16.

SECTION 17. LESSOR'S RIGHT TO PERFORM.

If the Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Lessor may itself

make such payment or perform or comply with such agreement, after giving not less than five (5) Business Days' prior notice thereof to the Lessee (except in the event that an Loan Event of Default resulting solely from a Lease Event of Default shall have occurred and be continuing, in which event Lessor may effect such payment, performance or compliance to the extent necessary to cure such Loan Event of Default with notice given concurrently with such payment, performance or compliance) in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by the Lessee to the Lessor on demand.

SECTION 18. ASSIGNMENTS BY LESSOR.

18.1 **Assignment to Lender.** (a) The Lessee and the Lessor hereby confirm that concurrently with the execution and delivery of this Lease, the Lessor has executed and delivered to the Lender the Loan Agreement, which (subject to Section 18.3 hereof and all rights of Lessee thereunder) assigns as collateral security and grants a security interest to the Lender in, to and under this Lease and certain of the Rent payable hereunder. The Lessee hereby consents to such assignments and the creation of such lien and security interest and consents to the terms and provisions of the Loan Agreement. The Lessee (i) acknowledges that such assignment and security interest provides for payment by the Lessee to the Lender of all Rent due to the Lessor hereunder (other than Excepted Rights in Collateral) and for the exercise by the Lender of all rights of Lessor hereunder to give any consents, approvals, waivers, notices or the like, to make any elections, demands or the like or to take any other discretionary action hereunder, except as specifically set forth in the Loan Agreement, (ii) acknowledges receipt of an executed counterpart of the Loan Agreement, (iii) agrees to pay directly to the Lender all amounts of Rent (other than Excepted Rights in Collateral) due to the Lessor hereunder or under any other Operative Agreement, and (iv) agrees that any such payment shall be absolute and unconditional as set forth in Section 2.5 hereof. Lessee will furnish to the Lender counterparts of all notices, certificates, opinions or other documents of any kind required to be delivered hereunder by the Lessee to the Lessor. The Lessor agrees that it shall not otherwise assign or convey its right, title and interest in and to this Lease, the Equipment or any Unit, except as expressly permitted by and subject to the provisions of the Participation Agreement, the Trust Agreement and the Loan Agreement. Lessee agrees that, if a foreclosure occurs under the Loan Agreement at a time when no Lease Default shall have occurred and be continuing, the Lessee will take all appropriate steps to facilitate such foreclosure consistent with the Lessee's rights under this Lease, including, without limitation, acceptance of a new Lessor.

(b) The Lessee and the Lessor agree that upon the release of the Lien of the Loan Agreement in respect of any Unit pursuant to the terms thereof (i) this Lease shall be a separate and independent Lease with respect to such Units and (ii) the leasehold interests of the

Lessor in respect of each such Unit shall not be subject to the Lien of the Loan Agreement, and (iii) all Rent in respect of each such Unit shall be payable directly the Lessor.

18.2 Obligations and Rights of Lender. Except as provided in Section 18.3 hereof or in the Participation Agreement, the Lessee and the Lessor each acknowledge and agree that the Lender (in its capacity as such) shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof.

18.3 Quiet Enjoyment. Neither Lessor nor any Person deriving its rights through, under or from Lessor (including, without limitation, the Lender) shall, so long as no Lease Event of Default shall have occurred and be continuing, take or cause to be taken any action contrary to Lessee's rights and the rights of any sublessee of Lessee under the Lease, including, without limitation, the right to possession, use and quiet enjoyment of the Equipment.

SECTION 19. USE AND POSSESSION; SUBLEASES; ASSIGNMENT BY LESSEE.

19.1 Lessee's Rights to the Equipment. Subject to the exercise of Lessor's rights under Section 15.2 hereof, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate, subject to Section 7.3 hereof in any lawful manner for which the Units were originally designed or as the Units may be modified pursuant to the terms hereof; provided, however, in no event shall the Units be used to carry or transport Hazardous Substances.

19.2 Subleases. The Lessee shall not, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, enter into any sublease with respect to any Unit, except, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, pursuant to a sublease of not less than ten percent (10%) of the Units then subject to this Lease to a Person which is (a) a corporation, partnership, joint venture, trust or limited liability company organized under the laws of any state of the United States, (b) not subject to any bankruptcy, reorganization or similar proceeding under the Bankruptcy Code or any similar law, and (c) either (i) an Affiliate of Lessee, (ii) a corporation, partnership, joint venture, trust or limited liability company in which the Lessee has a twenty-five percent (25%) or greater ownership and voting interest, (iii) any responsible corporation, partnership, joint venture, trust or limited liability company engaged in the business of supplying, mining or producing coal; provided, that, in case of this clause (iii), (w) any such sublease shall have a term equal to or shorter than the lesser of twenty-four (24) months or the balance of the Term of the Lease, (x) at the time such sublease is executed, the Lessee shall have a tangible net worth of \$150,000,000 or more, (y) no material adverse change shall have occurred in the financial condition of the Lessee in the twenty-four (24) months preceding the commencement of such sublease and (z) not more than thirty (30) days after the commencement of such sublease, Lessee shall have delivered to Lessor a certificate of the Chief Financial Officer of Lessee with respect to the matters set forth in clause (x) and (y) above, or (iv) a responsible company engaged in the business of supplying coal which has assumed Lessee's obligations to supply coal to the Cedar Bay cogeneration facility located at Jacksonville, Florida (a

"Permitted User"). No sublease shall in any way discharge or diminish any of the Lessee's obligations hereunder, and the Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Lease and the other Lessee Agreements to the same extent as if such sublease had not been entered into. Each sublease permitted by this Section shall (a) be expressly subject and subordinate to all of the provisions of this Lease and to the rights and remedies of Lender under the Loan Agreement and Lessor under this Lease in respect of the Units covered by such sublease, (b) be for a term not extending beyond the end of the Basic Term Expiration Date or the end of the Renewal Term then in effect, and (c) shall not be less restrictive than this Lease or include any term or provision which could reasonably be expected to result in material adverse consequences to the Lessor, the Owner Participant or the Lender. In addition, if the Lessee enters into any such sublease, the Lessee shall deliver to Lessor a copy of any such sublease as soon as practicable after execution thereof, and Lessee shall pay all of Lessor's, Owner Participant's and the Lender's reasonable out-of-pocket expenses incurred in connection with such transaction.

19.3 Assignment by Lessee. Lessee shall not, at any time, assign or transfer its leasehold interest hereunder to any Person without the prior written consent of Lessor, except, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, Lessee may, at any time, assign or transfer its leasehold interest hereunder to any Permitted User described in clauses (i) and (iv) of Section 19.2 hereof, provided that (i) such assignee or transferee shall have duly assumed the obligations of the Lessee hereunder, (ii) upon the effectiveness of such assignment or transfer, no Lease Default or Lease Event of Default shall have occurred and be continuing, (iii) the Lessee shall remain obligated under the Lease, and (iv) Lessee shall pay all of Lessor's, Owner Participant's and the Lender's reasonable out-of-pocket expenses incurred in connection with such assignment or transfer.

19.4 Noncomplying Subleases or Assignments. Any assignment of this lease or sublease or transaction which constitutes or operates as an assignment or sublease of any Unit by the Lessee in violation of Section 19.2 or 19.3 shall be void. In connection with any assignment permitted by Section 19.3, Lessee shall deliver to Owner Participant and the Lender a legal opinion of independent counsel, selected by Lessee and reasonably acceptable to Owner Participant and the Lender, stating that under the laws of any applicable jurisdiction (i) all filings, notices, recordings or other actions necessary or appropriate to perfect the ownership interests of the Owner Trustee and security interest of the Lender in Units located in such jurisdiction have been made or taken and (ii) the Lease is enforceable against such Permitted User.

19.5 Delivery of Documents, Expenses. Lessee shall promptly deliver the original "chattel paper" copy of each sublease with a term longer than one (1) year to the Lender and shall deliver copies of all such subleases to Lessor. Lessee hereby grants Lessor a security interest in each such sublease, provided that so long as no Event of Default shall have occurred and be continuing the Lessee may exercise its rights under such sublease, including, without limitation, the collection, application and enjoyment of rents thereunder. Lessee agrees to indemnify and hold Lessor and Lender harmless against any and all reasonable out-of-pocket expenses, claims, demands and liabilities of whatever nature relating to or in any way arising out of such sublease or assignment, including, without limitation all reasonable out-of-pocket

costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with respect to such sublease or assignment.

SECTION 20. OPTIONS TO PURCHASE; RENEW.

20.1 Purchase Option. So long as no Lease Event of Default has occurred and is continuing (at the time of notice or exercise), the Lessee shall have the right, upon the notice required by Section 20.3 hereof, to purchase all, but not less than all, of the Units then leased hereunder upon the expiration of the Basic Term or upon the expiration of any Renewal Term then in effect for the Units. The purchase price for such Units shall be equal to the then Fair Market Sales Value of such Units. If the Lessee shall have exercised an option to purchase hereunder and the Lessor shall have received the Purchase Price, the Lessor shall convey to the Lessee at the end of the Basic Term, or at the end of the then current Renewal Term, as the case may be, all right, title and interest of the Lessor in and to the Units purchased on an "as-is, where-is" basis, without recourse or warranty except a warranty against Lessor's Liens. The Lessee agrees that it will make payment of the purchase price of the Units purchased under this Section 20.1 by electronic funds transfer, by Noon (New York time) on the due date of such payment, of Federal or otherwise immediately available funds.

20.2 Renewal Option at Expiration of Basic Term. So long as no Lease Default under Sections 15.1(a), (f) or (g) hereof or Lease Event of Default has occurred and is continuing (at the time of notice and exercise), the Lessee shall have the right, upon the notice required by Section 20.3 hereof, on the Basic Term Expiration Date for the Units, (or, with respect to the second Renewal Term, on the expiration date of the first Renewal Term) to renew this Lease with respect to all but not less than all of the Units for up to two (2) consecutive Renewal Terms of two (2) years each (the "*Renewal Terms*"), commencing on the Renewal Term Commencement Date for such Units. All of the provisions of this Lease, shall be applicable during each Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 20.5 hereof, and Basic Rent for such Units shall be equal to the lesser of the Fair Market Rental Value for such Units or two-thirds (2/3) of the average Basic Rent.

20.3 Lessee's Notice. The Lessee shall provide a notice to the Lessor no less than one-hundred fifty (150) days prior to the expiration of the Basic Term or any Renewal Term then in effect for the Units indicating whether the Lessee will (i) purchase all Units pursuant to Section 20.1 hereof, or (ii) renew this Lease with respect to all Units pursuant to Section 20.2 hereof, or (iii) return such Units to the Lessor pursuant to Section 14 hereof. Such notice shall be irrevocable. In the event that notice is not timely provided by the Lessee in accordance with the terms of this Section 20.3, the Lessee will be deemed to have elected to return such Units to the Lessor at the end of the Basic Term or such Renewal Term for such Units, as the case may be.

20.4 Determination of Fair Market Rental Value Not more than one (1) year nor less than six (6) months prior to the expiration of the Basic Term for the Units or any Renewal Term then in effect for the Units, the Lessee may notify the Lessor that the Lessee desires a

determination of the Fair Market Sales Value of such Units as of such expiration date or the Fair Market Rental Value of such Units for a Renewal Term commencing upon the Renewal Term Commencement Date. The Lessee's request for a determination of Fair Market Sales Value or Fair Market Rental Value shall not obligate the Lessee to exercise any of the options provided in Sections 20.1 or 20.2 hereof.

20.5 Stipulated Loss Value During Renewal Term. The Stipulated Loss Value of any Unit during a Renewal Term shall be determined on the basis of the Fair Market Sales Value of such Unit as of the first day of such Renewal Term, reduced in equal monthly increments to the estimated Fair Market Sales Value of such Unit as of the last day of such Renewal Term.

20.6 Re-delivery of Equipment. Unless the Lessee has elected to exercise its option to purchase or renew this Lease in respect of such Units as provided in Section 20.1 or 20.2 hereof, such Units shall be returned to the Lessor at the end of the Basic Term, or any Renewal Term then in effect, as the case may be, with respect to such Units in accordance with Section 14 hereof.

SECTION 21. INTEREST ON OVERDUE RENT.

Anything to the contrary herein contained notwithstanding, any nonpayment of Rent due hereunder shall result in the additional obligation on the part of the Lessee to pay as Supplemental Rent an amount equal to interest at the Late Rate applicable to the outstanding Notes on such overdue Rent for the period of time during which such Rent is overdue and not paid.

SECTION 22. MISCELLANEOUS.

22.1 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon confirmation of receipt thereof (if sent during business hours on a Business Day, or otherwise on the next succeeding Business Day), in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to the Lessor:

Wilmington Trust Company
Rodney Square North

1100 North Market St.
Wilmington, Delaware 19801-0001
Attention: Ms. Carolyn C. Daniels
Senior Financial Services Offices
Fax No.: (302) 651-1576
Confirmation No.: (302) 651-8272

Payment Instructions:
Chase Manhattan Bank
New York, NY
ABA Number: 021000021
For credit to: Wilmington Trust Company
Account Number: 9201-014363
Reference: KeyCorp Leasing Ltd./Costain Coal Inc.

with a copy to Owner Participant:

KeyCorp Leasing Ltd.
54 State Street
Albany, New York 12207
Attn.: Leveraged Lease Manager
Fax No.: (518) 486-8172
Confirmation No.: (518) 487-4462

Payment Instructions:
Key Bank USA N.A.
Albany, New York
ABA Number: 021311192
For credit to: Key Bank USA N.A.
Attn.: Ms. Debby Brady
Account Number: 300001076
Reference: Costain Coal Inc.

If to the Lender:

National City Leasing Corporation
101 South 5th Street
Louisville, Kentucky 40202
Attention: Ronald L. Johnson
Fax No.: (502) 581-6488
Confirmation No.: (502) 581-4244

Payment Instructions:
National City Bank, Kentucky
ABA Number: 083000056
For credit to: National City Leasing Corporation

Account Number: 706-7160-3
Reference: Costain Coal Inc.

If to the Lessee:

Costain Coal Inc.
249 East Main St., Suite 400
Lexington, Kentucky 40507
Attention: Jeffry M. Hoehne
Vice President & General Counsel
Fax No.: (606) 255-0191
Confirmation No.: (606) 255-4006

22.2 Execution in Counterparts. This Lease, and any amendment or supplement hereto, shall be delivered in New York and may be executed in any number of counterparts, each executed counterpart constituting an original, and in each case such counterparts shall constitute but one and the same instrument; provided, however, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code ("UCC")), no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Lender on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the UCC.

22.3 Governing Law; Severability. This Lease, as extended, amended, modified, renewed or supplemented, shall be governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.

22.4 Headings and Table of Contents. The headings of the sections of this Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

22.5 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns.

22.6 True Lease. It is the intent of the parties to this Lease that it will be a true lease and not a "conditional sale," and that the Lessor shall at all times be considered to be the owner of each Unit which is the subject of this Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease conveys to the Lessee no right, title or interest in any Unit except as lessee. To the extent that

Article 2A ("*Article 2A*") of the UCC applies to the characterization of this Lease, the parties hereby agree that this Lease is a "Finance Lease" as defined therein. Lessee acknowledges: (i) that Lessee has selected the "Supplier" (as defined in the UCC) and has directed Lessor to purchase the Equipment from the Supplier in connection with this Lease, and (ii) that Lessee has been informed in writing in this Lease, before Lessee's execution of this Lease, that Lessee is entitled under Article 2A to the promises and warranties, including those of any third party, provided to Lessor by the Supplier in connection with or as part of the Purchase Agreement, and that Lessee may communicate with the Supplier and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

22.7 Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto; provided, however, any breach or default, once waived in writing, shall not be deemed continuing for any purpose of the Operative Agreements.

22.8 Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on the behalf of any such party under this Lease, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby on any Closing Date regardless of any investigation made by any such party or on behalf of any such party.

22.9 Limitation of Lessor's Liability. It is expressly agreed and understood that all representations, warranties and undertakings of the Lessor hereunder (except as expressly provided herein) shall be binding upon the Lessor only in its capacity as Owner Trustee under the Trust Agreement, except that the Lessor shall be liable in its individual capacity for its gross negligence or willful misconduct or for breach of its covenants, representations and warranties made in such capacity contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement

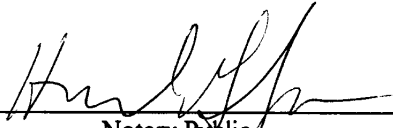
By 
Name: EMMETT R. HARMON
Title: VICE PRESIDENT

COSTAIN COAL INC.

By _____
Name: _____
Title: _____

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 29 day of December, 1993, before me personally appeared EMMETT R. HARMON to me personally known, who being duly sworn, says that he is a VICE PRESIDENT of Wilmington Trust Company, that said instrument was signed on behalf of said Delaware banking corporation by authority of its Board of Directors, and he/she acknowledges that the execution of the foregoing instrument was the free act and deed of said banking corporation.



Notary Public

[NOTARIAL SEAL]
My Commission Expires:

LEWIS J. GEMMOUR
Notary Public, New York
State of New York
County of New York
Commission Expires December 14, 94

STATE OF)
) ss:
COUNTY OF)

On this day of December, 1993, before me personally appeared _____, to me personally known, who being duly sworn, says that he/she is a _____ of Costain Coal Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission Expires:

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement

By _____
Name:
Title:

COSTAIN COAL INC.

By  _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of December, 1993, before me personally appeared _____, to me personally known, who being duly sworn, says that he is a _____ of _____ on by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

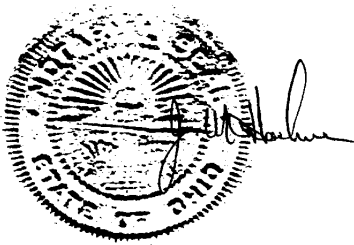
By: _____
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

STATE OF Ohio)
) ss:
COUNTY OF Hamilton)

On this 28th day of December, 1993, before me personally appeared George E. Oberg, to me personally known, who being duly sworn, says that he is a Vice President - Finance of Costain Coal Inc., that said instrument was signed on December 28, 1993 on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



By: Jeffery M. Hoehne
Notary Public

JEFFERY M. HOEHNE, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 147.03 R.C.

EXHIBIT A
to Equipment Lease Agreement

LEASE SUPPLEMENT NO. _____

Dated December 30, 1993

between

WILMINGTON TRUST COMPANY,
not in its individual capacity except as otherwise expressly
provided herein but solely as Owner Trustee,
Lessor

and

COSTAIN COAL INC.,
Lessee

ROLLING STOCK

CERTAIN RIGHTS, TITLE AND INTEREST OF THE LESSOR IN AND TO THIS LEASE SUPPLEMENT, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF NATIONAL CITY LEASING CORPORATION, AS LENDER UNDER A LOAN AND SECURITY AGREEMENT DATED AS OF DECEMBER 30, 1993, BETWEEN SAID LENDER, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE SUPPLEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY NATIONAL CITY LEASING CORPORATION, AS LENDER, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF.

FILED WITH THE INTERSTATE COMMERCE COMMISSION
PURSUANT TO 49 U.S.C. §11303
ON _____, 1993 AT _____ .M.
RECORDATION NUMBER _____

EXHIBIT A
to Equipment Lease Agreement

LEASE SUPPLEMENT NO. 1

LEASE SUPPLEMENT NO. 1 dated December 30, 1993 (this "*Supplement*") between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity except as otherwise expressly provided herein but solely as Owner Trustee (in such capacity the "*Lessor*"), and Costain Coal Inc., a Delaware corporation (the "*Lessee*");

W I T N E S S E T H:

WHEREAS, the Lessor and the Lessee have heretofore entered into that certain Equipment Lease Agreement dated as of December 30, 1993 (the "*Lease*"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in the Lease;

WHEREAS, the Participation Agreement and the Lease provide that on the Closing Date, Seller shall deliver to Lessor a Bill of Sale dated such date by which Seller bargains, conveys, assigns, sets over, sells and delivers to Lessor, and Lessor purchases and accepts from the Seller, the Units to be conveyed on such Closing Date, and said Bill of Sale has been delivered by Seller and accepted by Lessor on such Closing Date;

WHEREAS, the Lease provides for the execution and delivery of a Lease Supplement substantially in the form hereof for the purpose of confirming the acceptance and lease of the Units under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the Lessor and the Lessee hereby agree as follows:

1. The Lessee hereby acknowledges and confirms that it has inspected and approved the Units set forth on Schedule I hereto and such Units comply in all material respects with the Specifications for such Units and are in good working order.
2. The Lessor hereby confirms delivery and lease to the Lessee, and the Lessee hereby confirms acceptance and lease from Lessor, under the Lease as hereby supplemented, the Units listed on Schedule I hereto.
3. The Lessee hereby represents and warrants that to the best of its knowledge no Event of Loss has occurred with respect to the Units set forth on Schedule I hereto as of the date hereof.
4. The Closing Date of the Units described above is the date of this Lease Supplement set forth in the opening paragraph hereof.

5. The aggregate Equipment Cost of the Units leased hereunder is \$ and the amounts comprising such Equipment Cost are set forth on Schedule I hereto. The Stipulated Loss Values applicable in respect of the Units are set forth on Schedule 7 to the Participation Agreement.

6. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Rent to Lessor for each Unit leased hereunder as provided for in the Lease.

7. The execution and delivery of this Lease Supplement will in no way relieve or decrease the responsibility of any manufacturer for the warranties it has made with respect to any Unit.

8. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Lease Supplement may refer to the "Lease Agreement dated as of December 30, 1993", the "Lease dated as of December 30, 1993" or the "Equipment Lease Agreement dated as of December 30, 1993," or may identify the Lease in any other respect without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement, unless the context shall otherwise require.

9. This Lease Supplement shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease shall be and remain in full force and effect.

10. This Lease Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

11. This Lease Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Supplement to be duly executed and delivered on the day and year first above written.

Lessor:

WILMINGTON TRUST COMPANY, not in its individual capacity except as otherwise expressly provided herein but solely as Owner Trustee

By: _____
Name _____
Title: _____

Lessee:

COSTAIN COAL INC.

By: _____
Name _____
Title: _____

Receipt of this original counterpart of the foregoing Lease Supplement No. 1 is hereby acknowledged this ____ day of December, 1993.

NATIONAL CITY LEASING CORPORATION, as Lender

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is a _____ of _____, that said instrument was signed on _____, 19____ on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By: _____
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known, who being duly sworn, says that he is a _____ of _____, that said instrument was signed on _____, 19____ on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By: _____
Notary Public

[NOTARIAL SEAL]

My Commission Expires:
